

**DECISION**

**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D. C. 20548

**FILE:** 3-219804

**DATE:** December 4 , 1985

**MATTER OF:** Simulators Limited, Inc.

**DIGEST:**

1. Protest that agency did not allow sufficient time for the preparation of proposals is dismissed as untimely because it was not filed prior to the closing date for receipt of proposals.
2. Protest that agency violated regulatory requirements concerning the conduct of discussions is denied since these requirements apply only with respect to proposals in the competitive range and the protester's proposal was not included in the competitive range.
3. Protest concerning evaluation of protester's proposal is denied where there is no showing that agency's evaluation was unreasonable or was inconsistent with law or the solicitation's evaluation criteria.
4. GAO will not conduct an independent investigation in connection with a bid protest in order to substantiate a protester's speculative allegations.
5. Whether the awardee's price is below cost involves the awardee's responsibility--a matter that GAO generally does not review.

Simulators Limited, Inc., protests the rejection of its proposal as technically unacceptable and the proposed award of a contract to Continental RPVs under request for proposals (RFP) No. DAAH01-85-R-0245, issued by the U.S.

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Army Missile Command, Redstone Arsenal, Alabama. The protester contends that the agency did not allow sufficient time for the preparation of proposals and did not conduct adequate discussions. The protester also contends that the agency's rejection of its proposal must have been for reasons other than those cited by the agency and that the awardee's pricing was unbalanced. We deny the protest in part and dismiss it in part.

#### Background

The solicitation was for target flight services in support of live-fire training exercises at the National Training Center at Fort Irwin, California. The contractor will be required to design and fabricate a small drone aircraft known as a Close Air Support Simulator (CASS), to demonstrate the performance of its CASS in test flights, and to implement target flight services at Fort Irwin during a 4-week phase-in period. The solicitation provided for options for the contractor to perform the same and other flight services during the next 11 months and two succeeding 12-month periods. The agency issued the solicitation on March 30, 1985, and required offerors to submit proposals by May 15. The solicitation stated that award would be made to that responsible offeror whose proposal conforming to the solicitation was most advantageous to the government.

The protester submitted a timely proposal, as did five other offerors. On May 21, the agency contacted the protester by telephone and advised the firm that the technical evaluation committee (TEC) had been unable to locate several items of information required by the RFP. The protester referred the agency to the pages of its proposal where it said the required information could be found. The agency informed the protester again, by telephone on May 29 and by letter dated May 30, that the information contained in its proposal was insufficient. By letter dated June 1, the protester revised several pages of its technical and management proposals. The agency evaluated these revisions and determined that the protester's proposal still did not satisfy the specific requirements of the RFP. The agency requested on June 5 that the protester provide the required information by June 10. By letter dated June 12, the

protester again revised its proposal and submitted some additional information. The agency evaluated the proposal as revised and, by letter dated July 9, informed the protester that its proposal was technically unacceptable, setting forth in detail the reasons for that determination.

Upon learning that the agency had rejected its proposal, the protester filed a protest with the agency by letter dated July 17. When it received no response to that letter, the protester filed a protest here on August 5, asking us to review all of the issues raised in its protest to the agency and also complaining about the time allowed for the preparation of proposals.

#### Proposal Preparation Period

The first of the protester's contentions is that the agency did not allow sufficient time for the preparation of proposals. This basis for protest is twofold: first, that the period from March 30 to May 15 was not enough time for offerors to prepare their proposals adequately and, second, that the protester received an amendment only 2 days before proposals were due; yet, the agency did not extend the closing date.

Our Bid Protest Regulations, 4 C.F.R. part 21 (1985), provide that a protest based upon an alleged impropriety apparent in a solicitation must be filed prior to the closing date for receipt of initial proposals. 4 C.F.R. § 21.2(a)(1). Since the time allowed for the preparation of proposals in this case was apparent from the solicitation, any protest that the time allowed was too brief should have been filed prior to the May 15 closing date. We note that the protester did ask the agency prior to May 15 whether the closing date would be extended and that the agency responded in an amendment that it would not be extended. The protester did not file a protest on this issue, however, until well after the closing date. Its protest on this issue therefore is untimely.

In any event, the 45-day period allowed in this case for the preparation of proposals exceeded the 30 days required by the law governing this solicitation, 15 U.S.C. § 637(e)(2)(B) (Supp. I 1983). Further, with respect to

the protester's complaint that it received an amendment only 2 days before proposals were due, we note that the agency issued the amendment 6 days prior to the closing date and that the amendment merely changed the required delivery date from September 28 to September 30. We cannot disagree with the agency's determination that this change was not significant enough to require that the closing date be extended.

#### Adequacy of Discussions

The protester contends that in rejecting its proposal, the agency violated section 15.610(c) of the Federal Acquisition Regulation (FAR), 48 C.F.R. § 15.610(c) (1984). Basically, that regulation provides that discussions conducted with an offeror in the competitive range must be meaningful in that the contracting officer must advise the offeror of any deficiencies in its proposal, attempt to resolve any uncertainties, and permit the offeror to revise its proposal.

The requirement for meaningful discussions contained in FAR § 15.610(c) only applies, however, to discussions conducted with offerors who have submitted proposals determined to be within the competitive range. The requirement does not apply prior to the competitive range determination. Auto Paint Specialist, Inc., dba K & K Truck Painting, B-205513, June 21, 1982, 82-1 CPD ¶ 609. Rather, prior to determining which proposals are in the competitive range, an agency may question an offeror concerning its proposal as part of the ongoing evaluation process, see ALM, Inc., et al., B-217284, et al., Apr. 16, 1985, 85-1 CPD ¶ 433, provided these "discussions" do not have an impact on contract requirements or unfairly prejudice other offerors. See Ensign Bickford Co., B-180844, Aug. 14, 1974, 74-2 CPD ¶ 97. Once it is determined that an offeror's proposal is not in the competitive range, however, the agency need not conduct further discussions with the offeror. ALM, Inc., B-217284, supra. Here, since the agency's efforts in affording the protester several opportunities to revise its proposal occurred before the competitive range was established, the protester has no basis to complain that the agency failed to conduct meaningful discussions.

### Evaluation of the Protester's Proposal

The agency determined that the protester's proposal was technically unacceptable based on a lack of information in the proposal sufficient to satisfy the requirements of paragraph L-22 of the solicitation. Paragraph L-22 described what was to be included in each offeror's proposal. Specifically, the paragraph contained two provisions, one of which stated that in order to demonstrate the offeror's understanding of the statement of work and the offeror's technical capability, each offeror's technical proposal had to provide evidence of the offeror's experience in target flight operations and other areas and had to contain specific examples of instances where the offeror's ability to perform the work described in the solicitation had been demonstrated. The other provision required the submission in an offeror's management proposal of a manning table and an organization chart, as well as job descriptions for each position shown on the table and the chart. It also required the management proposal to contain a plan of expansion showing the offeror's capability to support an increase in the agency's CASS requirements.

As a result of discussions with the agency, the protester's revised proposal stated that the firm previously had submitted to the agency--presumably in connection with similar requirements--proposals that the agency had determined to be technically acceptable. The proposal stated further that the firm planned to use as a consultant a former executive of what the protester characterized as a "predecessor" firm and contained a list of contracts for which that individual and the protester's president had been responsible. The protester also submitted (1) two pages from a trade publication containing photographs and brief descriptions of the aircraft built by the predecessor firm, (2) another page from the same publication which pictured the aircraft developed by the protester, accompanied by a two-paragraph description, and (3) the protester's four-page brochure on its aircraft.

The TEC evaluated all of this material and determined that the proposal was technically unacceptable because the information furnished by the protester did not adequately address the requirements of paragraph L-22.

For example, the agency noted that the proposal did not describe the work involved in the contracts listed or how the work related to what would be required in this procurement. It was also not clear to the TEC what the relationship was between the protester and the predecessor firm. Further, the agency concluded that the organizational chart submitted by the protester in its management proposal did not indicate how many people would be assigned to each job category, did not provide for radio repair personnel, and did not provide for a sufficient number of dual flight operation controllers. The proposal also did not contain a manning table.

It is not the function of this Office to reevaluate an offeror's proposal. Bank Street College of Education, 63 Comp. Gen. 393 (1984), 84-1 CPD ¶ 607. We will review an agency's evaluation only to ensure that it was reasonable and consistent with requirements of law and the stated evaluation criteria. Air Flight Service, B-216996, Apr. 12, 1985, 85-1 CPD ¶ 420. The protester bears the burden of clearly establishing that an evaluation was unreasonable. Id.

In this case, while the protester may disagree with the agency's conclusion that its proposal failed to satisfy specific requirements of paragraph L-22, the protester has not shown--or for that matter even alleged in any of its submissions--that its proposal in fact satisfied all of the material requirements of the RFP and that the agency's evaluation was unreasonable. Rather, the protester merely implies that because in the past it submitted similar proposals to the agency that were determined to be technically acceptable (the protester did not receive an award under either proposal), and because two third parties who reviewed the protester's proposal concluded that it was adequate, then the agency's determination of unacceptability must have been based on "reasons other than those stated." The fact that a protester may have submitted acceptable proposals in the past, however, does not establish that an agency's rejection of the protester's proposal in a later procurement is necessarily unreasonable, see Heckler & Koch, Inc., B-216484.2, Mar. 12, 1985, 85-1 CPD ¶ 303, and the opinions of third parties of course, are not at all relevant to this issue. There is no allegation that the agency's evaluation was inconsistent with law or the RFP's evaluation criteria. In short, the protester has not established any basis for us to question the agency's evaluation of its proposal.

The protester also has asked us to review each of the proposals in the competitive range to determine whether they complied with the requirements of the RFP any more than the protester's proposal did. The protester states that the issue in this case is not whether its proposal satisfied the solicitation's requirements, but rather whether its proposal was as complete as the others. Contrary to the protester's statement, however, it is indeed the technical acceptability of the protester's proposal that is at issue here. To the extent the protester is suggesting that the agency arbitrarily may have rejected its proposal while including other, equally deficient proposals in the competitive range, the protester has not alleged that any proposal included in the competitive range was in fact technically unacceptable. We regard the protester's position on this point as mere speculation. This Office will not conduct an independent investigation in order to substantiate a protester's speculations, Kisco Co., Inc., B-216646, Jan. 18, 1985, 85-1 CPD ¶ 56, nor, as indicated above, will we conduct a de novo review of technical proposals.

#### Other Issues

The submissions filed by the protester contain a number of complaints concerning its dealings with the agency. For example, the protester complains of the agency's failure to return its telephone calls and of the agency's alleged confusion with regard to when specific events occurred. None of these contentions states a valid basis for protest, however, and, therefore, will not be considered. 4 C.F.R. § 21.3(f).

The protester contends that the agency should have rejected RPVs' proposal because it was unbalanced, a claim the protester seeks to substantiate solely by contending that the awardee's price was below cost. Whether the awardee is capable of performing the contract at the price stated in its proposal involves the agency's affirmative responsibility determination. See International Service Corp., B-220006.2, Sept. 9, 1985, 85-2 CPD ¶ 282. We generally do not review such matters. 4 C.F.R. § 21.3(f)(5).

Finally, with respect to the protester's contentions concerning the agency's award of a contract while this

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protest was pending, the agency reports that award has not yet been made. This therefore is no reason for us to consider this issue.

The protest is denied in part and dismissed in part.

*for* *Raymond S. Jones*  
Harry R. Van Cleve  
General Counsel